IN THE HIGH COURT OF UTTARANHAL
AT NAINITAL
Writ Petition No. 1800 of 2002 (S/B)

Kundan Singh aged about 30 years
S/o Sri Padam Singh
R/o Terha Road Lakhanpur
Ramnagar
District Nainital (Uttaranchal) … Petitioner

Versus

1. State of Uttaranchal through
   Its Secretary
   Food & Civil Supplies
   Dehradun
2. The Secretary,
   Food & Civil Supplies
   Dehradun
3. The Additional Secretary/Controller
   Standard Weight & Measure
   Dehradun … Respondents

Sri D.S. Patni, learned counsel for the petitioner
Sri N.C. Gupta, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

By way of present writ petition, the petitioner has prayed for a writ order or direction in the nature of mandamus commanding the respondents to give appointment under dying in harness rules in Standard weight & Measure Department, Bazpur, District Udham Singh Nagar.

Brief facts giving rise to this petition are that Virendra Singh brother of the petitioner met untimely death on 21.08.1997 during service. It has been contended in the writ petition that the petitioner and none else was dependent upon the deceased. Hence, as a consequence of the untimely death of Virendra Singh, the petitioner is entitled to seek appointment under dying in harness rules.

The petitioner has further averred in the writ petition that he requested the Controller, Weight and Measure Department for his appointment under dying in harness rules but the authorities concerned

did not pay any heed to the genuine grievance of the petitioner. Therefore, he preferred the representation to the Chief Minister.

The petitioner in support of his contention has filed annexure – 11, a copy of the modification issued by Uttaranchal Government on 31.08.2002 and on the basis of the notification has submitted that the petitioner is entitled to get an appointment under the dying in harness rules.

The counter affidavit has been filed by the respondents who have stated therein that the notification dated 31.08.2002 issued by the Uttaranchal Government has been cancelled by the notification / cancellation latter dated 31.10.2002 which is annexure C.A.-2 to this petition.

Learned standing counsel has also invited my attention towards the annexure C.A. – 1 filed along with the counter affidavit and has submitted that the brother is not entitled to get the benefit under the provision of dying in harness rules in view of the notification dated 07.10.1974 issued by U.P. Government.

It has also been submitted by him that by way of nitification dated 31.08.2002, the provisions of U.P. Dying and Harness Rules 1974 were adopted by the Government of Uttaranchal but by subsequent notification dated 31.10.2002, the earlier notification dated 31.08.2002 was cancelled.

It has also been submitted that the petitioner cannot be said to be dependent upon the deceased Virendra Singh in view of the fact that Padam Singh – father of the deceased was also in service at the time of the death of Virendra Singh.

Learned counsel for the petitioner in his reply has stated that the notification dated 31.08.2002 was issued under Article 309 of the Constitution of India and the rules once framed under Article 309 cannot be superseded merely by an office order dated 31.10.2002.

In view of the argument advanced by the learned counsel for the parties before me, I direct that the petitioner shall file the representation before the concerned authorities within a period of 15 days after receipt of

the order passed by this Court and the authority concerned shall decide the representation filed by the petitioner within a period of one month thereafter accordingly to law.

In view of the observations made above, the writ petition is finally disposed of.

(B.C. Kandpal, J.)

06.06.2005
ASWAL